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REMARKS**Restriction requirement**

In the Office Action of October 15, 2004 the Examiner asserts that the Applicant's amendment filed September 20, 2004 has necessitated a restriction requirement. According to the Examiner, the present application contains claims directed to two distinct groups of the claimed invention, Group I (claims 1-40 and 48-51) and Group II (claims 41, 42, 44, 46 and 47). Further, the Examiner states that if Group I is selected, further election is required among Species IA (claims 1-20 and 37-40), Species IB (claims 21-25 and 48-51), and Species IC (claims 26-36).

The Applicant respectfully requests that the Examiner reconsider the requirement for restriction as discussed below.

1. The Examiner states that the Applicant's amendments have necessitated the restriction requirement. The Applicant has reviewed the amendments to the claims made with the response filed on September 20, 2004 and does not understand why those amendments should necessitate such a requirement. In the September amendment, only claims 21 and 41 have been substantively modified. Claims 18 and 36 have been rewritten in independent form and new claims 48-51 just reflect the language of claims 23-25 prior to the amendment to claim 21.

The Examiner is respectfully reminded that, although 37 CFR 1.142(a) provides that restriction is proper at any stage of prosecution up to final action, according to MPEP 811.02 "a second requirement may be made when it becomes proper" (emphasis added). We submit that restriction is not proper in this case. Should the Examiner disagree with the Applicant, the Examiner is respectfully requested to show to the Applicant why the current restriction is only proper at this stage and was not proper on the June 22, 2004 date of the first action. For example, memory device claims and method claims were already present on that date, and no restriction requirement was made by the Examiner at that stage.

2. Further, the Examiner is also reminded that, as set forth in MPEP 816:

'The particular reasons relied on by the examiner for

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holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.'

The Applicant submits that the Examiner, in the division between Groups I and II and Species IA, IB and IC is simply repeating the subject matter of those claims, without stating why the groups or species are distinct from each other. Therefore, we submit that the Examiner has merely concluded that the inventions as claimed are distinct and has not provided the requisite reasons for that conclusion.

3. The Applicant also notes that 35 USC § 121 authorizes, but does not require, the USPTO to restrict an application to one invention if two or more independent and distinct inventions are claimed in one application. In view of the expense that would be imposed upon the Applicant by multiple patent applications and multiple patents, and in view of the fact that this restriction requirement is untimely, we respectfully request reconsideration.

4. Applicant further notes that the total number of Group II claims 41, 42, 44, 46 and 47 is only five, the number of Species IB claims 21-25 and 48-51 is only nine, and the number of Species IC claims is only eleven. Additionally, the Applicant notes that species IA, IB and IC have two class/subclass groupings in common (257/9 and 977/DIG1). The Examiner is respectfully reminded of MPEP 803, which states that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions."

Therefore, the Applicant submits that the restriction requirement set forth in the Office Action of October 15, 2004 is improper. Alternatively, the Applicant submits that the restriction should be limited to Group I and Group II only, and not also to Species IA, IB, and IC. As such, reconsideration is requested and the Examiner is respectfully requested to withdraw the restriction requirement. However, as required under 35 USC § 121, the Applicant provisionally elects Species IA claims 1-20 and 37-40.

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The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, fax no. (703)-872-9306 on

Respectfully submitted,

November 12, 2004

(Date of Deposit)

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